

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

WILLIAM A. LARUE,

Plaintiff,

v.

CIVIL ACTION NO. 2:08-cv-01450

CPL. DAVID TONEY, et al.,

Defendants.

**MEMORANDUM OPINION & ORDER**

Pending before the court are the plaintiff's Motion for Summary Judgment [Docket 77] and the defendants' Motion for Summary Judgment [Docket 125]. This matter was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny both the plaintiff's Motion for Summary Judgment [Docket 77] and the defendants' Motion for Summary Judgment [Docket 125].

The parties have timely filed written objections to the Magistrate Judge's findings of fact and recommendation. Having reviewed the objections *de novo*, the court **FINDS** that they ultimately are without merit. The court agrees with and adopts the thorough analysis of the Magistrate Judge. The court **DENIES** the plaintiff's Motion for Summary Judgment [Docket 77] and the defendants' Motion for Summary Judgment [Docket 125]. Disputed issues of material fact preclude summary judgment in this case.

The Clerk is **DIRECTED** to forward copies of this written opinion and order to all counsel of record and any unrepresented parties.

ENTER: February 11, 2010



Joseph R. Goodwin, Chief Judge